

MONTANA LEGISLATIVE HISTORY

Chapter 353 ~~19~~ 2007

Bill H _____ S 318 Original bill & history X c

H. Committee on JUDICIARY

Hearing Date(s) 3/22 X c

EXEC. ACTION 3/23 X c

_____ c

_____ c

Date Out _____ c

S. Committee on JUDICIARY

Hearing Date(s) 2/1 X c

*EXEC. ACTION _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

NOTE: BILL AMENDED ON SENATE FLOOR;
AMENDMENT INCLUDED

FOR AUDIOFILES OF COMMITTEE HEARINGS,
VISIT : [www.leg.mt.gov/css/sessions/60th/](http://www.leg.mt.gov/css/sessions/60th/default.asp)
[default.asp](http://www.leg.mt.gov/css/sessions/60th/default.asp)

AND CLICK ON LINKS NEAR BOTTOM OF
PAGE

SENATE BILL NO. 318
INTRODUCED BY J. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING MONTANA'S RECREATIONAL USE STATUTE TO PROVIDE LIMITED LIABILITY TO LANDOWNERS WHO PROVIDE AIRSTRIPS FOR THE PUBLIC WITHOUT VALUABLE CONSIDERATION; AMENDING SECTIONS 70-16-301 AND 70-16-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-16-301, MCA, is amended to read:

"70-16-301. Recreational purposes defined. "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, waterskiing, camping, picnicking, pleasure driving, private, noncommercial flying of aircraft, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions."

Section 2. Section 70-16-302, MCA, is amended to read:

"70-16-302. (Temporary) Restriction on liability of landowner. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802 or other funds provided under 77-1-815.

(2) As used in this part, the following definitions apply:

(a) (i) "Airstrip" means improved or unimproved landing areas used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

(b) ~~"landowner"~~ "Landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation

easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

~~(3)(c) As used in this part, "property"~~ "Property" means land, roads, airstrips, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

~~(4)(3)~~ The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

70-16-302. (Effective on occurrence of contingency) Restriction on liability of landowner. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

(2) As used in this part, the following definitions apply:

(a) (i) "Airstrip" means either improved or unimproved landing areas used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

(b) "landowner" "Landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

~~(3)(c) As used in this part, "property"~~ "Property" means land, roads, airstrips, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

~~(4)(3)~~ The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area,

subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct."

NEW SECTION. **Section 3. Two-thirds vote required.** Because [section 2] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

Bill Draft Number: LC0890

Bill Type - Number: SB 318

Short Title: Extend recreational use immunity to aircraft

Primary Sponsor: Jim Peterson

Chapter Number: 353

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 47

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/30/2007			
(S) Signed by Governor	04/27/2007			
(S) Transmitted to Governor	04/17/2007			
(H) Signed by Speaker	04/17/2007			
(S) Signed by President	04/13/2007			
(S) Returned from Enrolling	04/04/2007			
(C) Sent to Printing	04/04/2007			
(S) Sent to Enrolling	04/03/2007			
(H) Returned to Senate	04/02/2007			
(H) 3rd Reading Concurred	04/02/2007	72	28	
(H) Scheduled for 3rd Reading	04/02/2007			
(H) 2nd Reading Concurred	03/31/2007	77	23	
(H) Scheduled for 2nd Reading	03/31/2007			
(H) Committee Report--Bill Concurred	03/29/2007			(H) Judiciary
(H) Committee Executive Action--Bill Concurred	03/29/2007	13	4	(H) Judiciary
(H) Hearing	03/22/2007			(H) Judiciary
(H) First Reading	03/13/2007			
(H) Referred to Committee	03/12/2007			(H) Judiciary
(S) Transmitted to House	02/16/2007			
(S) 3rd Reading Passed	02/16/2007	46	4	
(S) Scheduled for 3rd Reading	02/16/2007			
(C) Sent to Printing	02/15/2007			
(S) 2nd Reading Passed as Amended	02/15/2007	44	6	
(S) 2nd Reading Motion to Amend Carried on Voice Vote	02/15/2007	49	1	
(S) Scheduled for 2nd Reading	02/15/2007			
(S) Scheduled for 2nd Reading	02/14/2007			
(S) 2nd Reading Passed Consideration	02/13/2007			
(S) Scheduled for 2nd Reading	02/13/2007			
(C) Sent to Printing	02/02/2007			
(S) Committee Report--Bill Passed as Amended	02/02/2007			(S) Judiciary

(S) Committee Executive Action--Bill Passed as Amended	02/02/2007	7	5 (S) Judiciary
(S) Hearing	02/01/2007		(S) Judiciary
(C) Introduced Bill Text Available Electronically	01/22/2007		
(S) Referred to Committee	01/22/2007		(S) Judiciary
(S) First Reading	01/22/2007		
(S) Introduced	01/22/2007		
(C) Draft Delivered to Requester	01/18/2007		
(C) Draft Ready for Delivery	01/18/2007		
(C) Draft in Assembly/Executive Director Review	01/17/2007		
(C) Draft in Final Drafter Review	01/17/2007		
(C) Bill Draft Text Available Electronically	01/16/2007		
(C) Draft in Input/Proofing	01/16/2007		
(C) Draft to Drafter - Edit Review [CAJ]	01/16/2007		
(C) Draft in Edit	01/16/2007		
(C) Draft in Legal Review	01/15/2007		
(C) Draft to Requester for Review	01/15/2007		
(C) Draft Request Received	11/16/2006		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Brueggeman	John	
Drafter	Lane	Valencia	
Primary Sponsor	Peterson	Jim	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Liability (see also: Remedies; Torts)		Simple	LIA

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: N
Session Law Ch. Number: 353
DEADLINE

Category: General Bills

Transmittal Date: 02/28/2007

Return (with 2nd house amendments) Date: 04/05/2007

Section Effective Dates

Section(s)	Effective Date	Date Qualified
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All Sections	27-APR-07	
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MINUTES

MONTANA SENATE 60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JESSE LASLOVICH**, on February 1, 2007
at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

President Mike Cooney
Sen. Jesse Laslovich, Chairman (D)
Sen. Aubyn Curtiss (R)
Sen. Larry Jent (D)
Sen. Carol C. Juneau (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused:

Sen. Carol Williams (D)
Sen. David E. Wanzonried (D)

Members Absent: None.

Staff Present: Carol Andersen, Committee Secretary
Valencia Lane, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 318, 1/29/2007; SB 350,
1/29/2007; SB 329, 1/29/2007; SB
348, 1/29/2007; SB 229, 1/29/2007
Executive Action: SB 266, SB 318

HEARING ON SB 318

Opening Statement by Sponsor:

00:01:36 SEN. JIM PETERSON (R), SD 15, opened the hearing on SB 318, Extend recreational use immunity to aircraft.

EXHIBIT(jus22a01)

Proponents:

00:07:58 Rep. Janet Taylor

00:08:24 Sen. John Brueggeman

00:09:03 Chuck Jarecki, Montana Pilots' Association

00:12:15 Debbie Alke, Aeronautics Division, Montana Department of Transportation

EXHIBIT(jus22a02)

00:14:00 John Ostlund, Yellowstone County

00:14:25 John McKenna, Bozeman Recreational Aviation Association

EXHIBIT(jus22a03)

00:15:50 Jerome Cain

EXHIBIT(jus22a04)

00:19:05 Larry Ashcraft, Montana Seaplane Association

EXHIBIT(jus22a05)

00:20:31 Mauri Morin, Polson Experimental Aircraft Association

00:23:15 Bill Gallea, President, Montana Pilots' Association

00:23:48 Gloria Hermanson

00:24:09 Wade Cebulski

00:25:04 Chuck Flynn, Montana Pilots' Association

00:25:27 Mike Ferguson, Townsend pilot, AOPA

00:27:25 Brad Vetter, Sleeping Giant Flying Club

EXHIBIT(jus22a06)

Opponents:

00:28:31 Al Smith, Montana Trial Lawyers Association

Informational Testimony: None.

Questions from Committee Members and Responses:

00:40:04 Sen. Perry to Sen. Peterson

00:41:45 Sen. Perry to Debbie Alke

00:42:19 Sen. Perry to Sen. Peterson

Closing by Sponsor:

00:45:54 Sen. Peterson

EXHIBIT(jus22a07)

EXHIBIT(jus22a08)

HEARING ON SB 350

Opening Statement by Sponsor:

00:50:03 SEN. GARY PERRY (R), SD 35, opened the hearing on SB 350, Crime of tampering with or destroying communication equipment.

Proponents:

00:52:45 Judy Wang, Assistant City Attorney, Missoula

EXHIBIT(jus22a09)

00:57:08 Mike Brady, Missoula Police Department

00:58:40 Cynthia Wolken, Attorney

EXHIBIT(jus22a10)

01:00:38 Kelsen Young, Executive Director, Montana Coalition Against Domestic and Sexual Violence

03:10:06 Sen. McGee
03:11:13 Sen. Moss
03:12:52 Sen. Perry
03:14:24 Sen. Laslovich
03:15:08 Valencia Lane
03:15:14 Sen. Shockley
03:15:46 Sen. Perry
03:15:57 Valencia Lane
03:16:27 Sen. Laslovich
03:17:02 Sen. Shockley
03:18:06 Sen. Laslovich
03:18:34 **Motion:** SEN. MCGEE CALLED THE QUESTION ON SB 266.
03:19:12 **Motion/Vote:** SEN. SHOCKLEY moved that SB 266 DO PASS
AS AMENDED. Motion carried 7-5 by roll call vote with
SEN. JENT, SEN. JUNEAU, SEN. MCGEE, SEN. MOSS, and SEN.
WANZENRIED voting no.

EXECUTIVE ACTION ON SB 318

03:21:31 **Motion:** SEN. SHOCKLEY moved that SB 318 DO PASS.

Discussion:

03:21:44 **Motion:** SEN. MCGEE moved that CONCEPTUAL AMENDMENTS BE
ADOPTED.

Discussion:

03:21:53 Valencia Lane, LSD
03:23:15 Sen. Laslovich

Discussion:

03:23:28 **Motion/Vote:** Motion carried unanimously by voice vote.
SEN. WILLIAMS and SEN. WANZENRIED voted aye by proxy.

03:23:49 **Motion:** SEN. MCGEE moved that SB 318 DO PASS AS
AMENDED.

Discussion:

03:25:50 Sen. Shockley

03:26:30 Sen. Perry

03:26:45 Sen. Laslovich

03:29:27 Sen. Shockley

03:31:01 Sen. Perry

03:33:13 Sen. McGee

03:35:23 Sen. Laslovich

03:36:09 Sen. O'Neil

03:38:06 **Motion/Vote:** SEN. MCGEE CALLED THE QUESTION ON SB 318.
Motion carried 7-5 by roll call vote with SEN. JENT,
SEN. LASLOVICH, SEN. MOSS, SEN. PEASE, and SEN.
WANZENRIED voting no. SEN. WILLIAMS and SEN. SHOCKLEY
vote aye by proxy

03:39:24 Valencia Lane

JUDICIARY

DATE 2-1-07

[illegible]



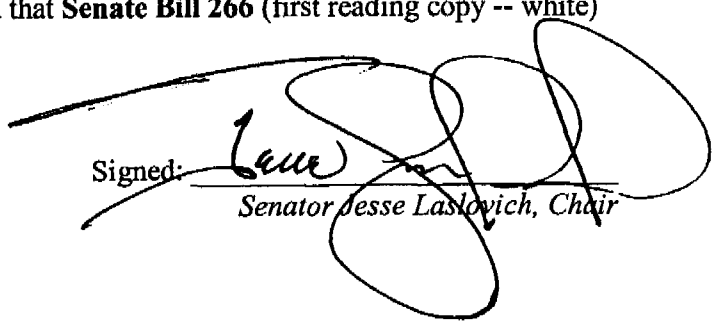
SENATE STANDING COMMITTEE REPORT

February 1, 2007

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 266** (first reading copy -- white) do pass as amended.

Signed: 

Senator Jesse Lasovich, Chair

And, that such amendments read:

1. Title, line 4.

Strike: "PROVIDING"

Insert: "CLARIFYING THAT"

2. Title, line 5.

Following: "CAPACITY"

Strike: "WITH IMMUNITY"

Insert: "ARE IMMUNE"

3. Page 1, line 13.

Following: "suit for"

Strike: "all"

Following: "damages"

Insert: ", as provided in 2-9-305"

4. Page 1, line 16 through line 17.

Following: "office." on line 16

Strike: remainder of line 16 through "2-9-305." on line 17

5. Page 1, line 19 through line 21.

Strike: section 2 in its entirety

Renumber: subsequent section

- END -

Committee Vote:

Yes 7, No 5

Fiscal Note Required 

221431SC.ssc



SENATE STANDING COMMITTEE REPORT

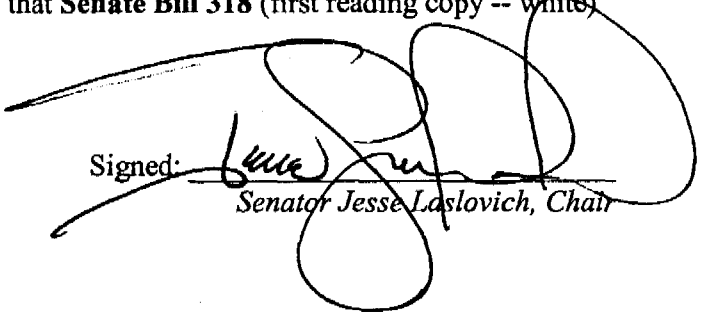
February 1, 2007

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 318** (first reading copy -- white) do pass as amended.

Signed:


Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Page 1, line 30.

Following: line 29

Insert: "(b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft."

Renumber: subsequent subsections

2. Page 2, line 25.

Following: line 24

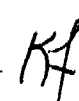
Insert: "(b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft."

Renumber: subsequent subsections

- END -

Committee Vote:

Yes 7, No 5

Fiscal Note Required 

221432SC.ssc

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-1-07 BILL NO. SB 318 NUMBER _____

MOTION: as amended

NAME	AYE	NO
SEN. LYNDA MOSS (D)		✓
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)		
SEN. GERALD PEASE (D)	✓	✓
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
	7	5
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

**MONTANA STATE SENATE
2007 LEGISLATURE**

JUDICIARY

VISITOR REGISTER

DATE 2-1-07

BILLS BEING HEARD TODAY SB 318, SB 350, SB 329
SB 358, SB 229

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Harry Ashcraft	406-982-8326	Montana Seaplane Assoc	318	✓	
Chuck Jarecki	1-883-2248	Mt. Pilots Assoc	318	✓	
Pat Melby	442-7450	Mt. Med. Ass'n	229	✓	
Gloria Hermanson	449-2334	LIFECENTER NW	229	✓	
MAURIE MORIN	887-2788	MPA/CAA	318	✓	
Ruth Smith	522-6949		329		
Mike McMahon	442-3690	N/A - Pro Bono	329		✓
Bill Gallea	443-2179	MT PILOT'S ASSOC.	318	✓	
Mike Brady	552-6278	MISSOULA Police	35	✓	
Glenn Timm	250-7987	MT Pilot's Assoc	318	✓	
Judy Dang	552-6026	Missoula City Attorney	350	✓	
John Ostlund	256-2701	Yellowstone County	318	✓	
Shirley K Brown	444-5906	DPHHS - CFSIS	348	Informal	
Hermette Gubler	677-3219	Montana Pilots Assoc	318	✓	
Wade Gubler	677-3219	AOPA	318	✓	
Mike Gubler	266-3712	AOPA	318	✓	
Stuck Flynn	451-9479	Mt. Pilots Assn	318	✓	
Ed Sheehy	523-5140	Office of Public Aff	328	✓	
Debbie Aike	444-2508	MDT Aeronautics	318	✓	
Gloria Hermanson	449-2334	MPA	318	✓	
Bob Gilbert	439-1957	MPA	318	✓	

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

JUS

~~EDUCATION AND CULTURAL RESOURCES~~

BILLS BEING HEARD TODAY[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

1. Title, line 6.

Following: "TO"

Insert: "PRIVATE"

2. Page 1, lines 14 and 15.

Strike: "private" on line 14 through "aircraft," on line 15

3. Page 1, line 16.

Following: "expeditions."

Insert: "The term includes the private, noncommercial flying of aircraft in relation to private land."

4. Page 1, line 28.

Following: "areas"

Insert: "on private land"

5. Page 2, line 2.

Following: "AIRCRAFT"

Insert: "at an airstrip"

6. Page 2, line 26.

Following: "areas"

Insert: "on private land"

7. Page 2, line 30.

Following: "AIRCRAFT"

Insert: "at an airstrip"

8. Page 3, line 16 through line 18.

Strike: section 3 in its entirety

Re-number: subsequent section

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Vice-Chair Ron Stoker on March 22, 2007 at
8:05 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Ron Stoker, Vice Chairman (R)
Rep. Douglas Cordier (D)
Rep. Robyn Driscoll (D)
Rep. Bob Ebinger (D)
Rep. George Everett (R)
Rep. Julie French (D)
Rep. Rick Jore (C)
Rep. Krayton Kerns (R)
Rep. Roger Koopman (R)
Rep. Deborah Kottel (D)
Rep. Tom McGillvray (R)
Rep. Jesse O'Hara (R)
Rep. Ken Peterson (R)
Rep. Holly Raser (D)
Rep. John Ward (R)

Members Excused: None.

Members Absent: Rep. Diane Rice, (R)
Rep. Dave Gallik, (D)

Staff Present: David Niss, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 254, SB 278, SB 282, SB 294, SB
318, SB 326 3/15/2007
Executive Action: None

HEARING ON SB 318

Opening Statement by Sponsor:

00:01:29 Sen. Jim Peterson (R), SD 15, opened the hearing on SB 318, Extend recreational use immunity to aircraft.

Proponents' Testimony:

00:05:53 Rep. Janna Taylor, HD 11

00:06:30 Debbie Alke, Administrator, Aeronautics Division,
Department of Transportation, State of Montana

00:08:05 Dan Prill, Pilot, Owner, Airstrip, Sand Coulee, Montana
EXHIBIT(juh61a01)

00:09:54 John McKenna, President, Recreational Aviation
Foundation of Montana, Bozeman, Montana

EXHIBIT(juh61a02)

EXHIBIT(juh61a03)

00:12:33 Jerome Cain, CAIN Ranch Airstrip, Aircraft and
Owners and Pilots Association, Command Pilot, Angel
Flight West, AOPA Airport Support Network
Volunteer, Recreational Aviation Foundation of
Montana, Bozeman, Montana

EXHIBIT(juh61a04)

00:15:45 Bob Gilbert, Montana Aviation Trades Association

00:16:24 Mike Ferguson, President, Northwest Region Aircraft
Owners and Pilots Association

00:19:01 Jim Lewis, Montana Flying Farmers and Ranchers
Association

00:20:52 Bill Gallea, MD, President, Montana Pilots Association,
Vigilante Chapter, Emergency Room Physician

EXHIBIT(juh61a05)

00:21:26 Gloria Hermanson, Licensed Private Pilot, Montana
Pilots Association

00:21:54 Walter Mehnke, Pilot

00:22:15 Kerry Duncan, Pilot,

00:22:57 Marilyn Lewis, Montana Flying Farmers, Secretary,
Aviation Associations of Montana

Opponents' Testimony:

00:23:34 Andrea Olsen, Montana Trial Lawyers Association

EXHIBIT(juh61a06)

Informational Testimony: None

Questions from Committee Members and Responses:

00:31:37 Rep. French
00:31:54 Ms. Alke
00:32:37 Rep. Ward
00:32:53 Sen. Peterson
00:36:27 Rep. Raser
00:37:12 Sen. Peterson
00:38:38 Ms. Alke
00:40:53 Mr. Cain
00:42:35 Rep. Kottel
00:43:21 Ms. Alke
00:45:05 Rep. Stoker
00:45:20 Ms. Alke
00:46:48 Rep. Ward

Closing by Sponsor:

00:47:41 Sen. Peterson

HEARING ON SB 254

Opening Statement by Sponsor:

00:53:31 Sen. David Wanzienried (D), SD 49, opened the hearing on SB 254, Require collective bargaining neutrality agreement in state services contracts.

Proponents' Testimony:

00:58:35 Melissa Case, Organizing Director, MEA-MFT

EXHIBIT(juh61a07)

EXHIBIT(juh61a08)

EXHIBIT(juh61a09)

EXHIBIT(juh61a10)

EXHIBIT(juh61a11)

EXHIBIT(juh61a12)

01:11:36 Keith Allen, International Brotherhood Union, Local #233

01:13:30 Jason Miller, AFL-CIO

Opponents' Testimony:

01:14:19 John Benion, Montana Chamber of Commerce

01:17:20 Margaret Morgan, Greater Montana Independent Electrical Workers Union

01:21:12 Steve Richards, Human Resource Director, Nightingale Nursing, Montana Health Systems

01:25:02 Gail Abercrombie, Montana Contractors Association

EXHIBIT 1
DATE 3/22/07
SB 1

March 22, 2007

Daniel F. Prill
472 Stockett Rd.
Sand Coulee, MT

Subject: Senate Bill 318 comments for the House Judiciary Committee

Gentlemen:

I am a private pilot and aircraft owner. I have a private airstrip on my land 10 miles east of Great Falls, MT. I constructed the airstrip in 1999 and started using it in 2000. The airstrip is shown as a private airstrip on both the State of Montana and the Federal Aviation Administration Aeronautical charts.

About 4 years ago an aircraft enroute to Great Falls from the east had to use my airstrip to land because of unexpected weather that suddenly shut down the Great Falls International Airport and the aircraft couldn't make it to Great Falls. I'm glad my airstrip was available for that pilot and his passengers. What I didn't realize at the time was the liability I was open to because of that pilot's use of my airstrip. Senate Bill 318 will rectify this situation for private airstrips.

Airstrip owners that open their property up to aircraft use at no charge should have no more liability exposure for the use of their land than other property owners that open up their property to the public for other recreational uses such as hunting or fishing. Aircraft are not included in Montana's Recreational Use Statute and this bill will add aircraft to the protection provided to private property owners by the Recreational Use Statute.

Please support this bill.

Thank you,


Daniel F. Prill

To: Montana House Judiciary Committee
From: John McKenna President of the Recreational Aviation Foundation
1711 West College Street Bozeman, MT. 59715
Date: March 22nd 2007
Place: Helena, MT.
Subject: SB 318 Recreational Use Statute extension to aircraft

Good Morning Members of the House Judiciary Committee:

I am here today as the President of the Recreational Aviation Foundation (RAF) a Bozeman based organization, as well as a lifelong resident of MT., and an active pilot for 37 years. Aviation has played a role in all of my life—both personal and professionally. I regularly utilize our aircraft for business reasons, but the real reason I am here today is to encourage you to give a Do Pass to this amendment to the existing law for recreational aviation use.

The RAF has a mission to enhance, preserve and create additional flying opportunities here in MT. This legislation will offer landowners the incentive to open their lands to use by aircraft. Private aircraft are an economic driver here in this state, and just like those that like to see our great state via car, motor home, bike, or from their motorcycle or horse—the aircraft is a mode of transportation that is the chosen method for many within our state boundaries, as well as visitors from all over the U.S. & Canada. Those that fly like to enjoy the same things that many of us do when not working here, including camping, hiking, fishing, and just enjoying what MT has to offer.

Since this amendment was introduced we have heard from a number of interested folks who have suggested that this will go a long way to assisting them in making the decision to allowing this use on their lands. The aviation community has done a great job of being a good citizen here in MT and looks forward to that continuing partnership. That relationship revolves around taking good care of the resources we have, and being responsible for our own actions and activities.

It is the goal of the RAF to continue to provide as many quality experiences for those who utilize aircraft to visit and tour this great state we call home.

This legislation will go a long way to assisting that goal.

Thank you for your time, interest and consideration.

House Judiciary Committee Testimony
SB 0318 Extend recreational immunity to aircraft

Chuck Jarecki, 28517 Rocky Point Road, Polson, MT 59860

I am a past president of the Western Montana Stockmen's Association and currently the Western Director of the 700 member Montana Pilots' Association. I am here today as a member of these two organizations to voice the organizations' support for SB 318.

I have been an active Montana pilot and aircraft owner for 46 years. I owned a ranch west of Polson for 26 years, on which I constructed an airstrip and airplane hangar. The airstrip was mainly for my own use. Other pilots were welcome to use it, but I always had a concern if an aviator should be injured or killed during aircraft operations. The current ranch owner, although not a pilot, keeps the airstrip maintained. He would like to have people fly in, but until the current statute is amended by this bill, he feels forced to keep the airstrip closed to the public. Other ranchers and farmers are in the same situation.

Montana's recreational use statute is designed to encourage landowners to open their lands to the public by limiting landowner liability to recreational users. The statute acts as a deterrent to lawsuits brought against landowners by individuals who do not want to take personal responsibility for their actions. We do not live in a perfect world. Of the four Montana cases of record where the recreational use statute was used as a defense, one occurred in my hometown of Polson. In *Jobe v. City of Polson*, a fisherman fell through a rotten board on a city owned dock and was injured. The courts ruled that the city did not commit willful and wanton misconduct. It is like driving down the road where a pothole may be encountered any time. We all take risks every day and must accept that fact as part of life.

If a pilot is involved in an accident when landing or taking off from a suitable site, the private landowner should not be held accountable for someone else's lack of good judgment and experience, no more that if a fisherman falls off the creek bank and drowns.

SB 0318 merely includes aviation as one of the many already enumerated recreational activities currently included in Montana's recreational use statute.

I urge you to give this bill a "do pass" recommendation.

**Montana House of Representatives
House Judiciary Committee Hearing of SB 0318**

3/22/07

Submitter: Jerome M. Cain, PO Box 1057, Lincoln, MT 59639-1057

Good morning,

My name is Jerome Cain; the last name is spelled C-A-I-N.

I own the Smiling Gulch Ranch west of Lincoln, Montana and also an aircraft hangar at Lincoln Airport S69. I am a private pilot and have been flying since 1990 and currently own two aircraft which are used for recreational and charitable flying. I am a member of the national Aircraft Owners and Pilots Association (AOPA) and also of state pilot organizations in seven western states. I am also a Command Pilot for Angel Flight West and the AOPA Airport Support Network Volunteer for Lincoln Airport.

The primary purpose of my flying is recreational for visiting recreational / backcountry airstrips throughout the western states for camping, hiking, fishing, photography, etc. While most recreational / backcountry airstrips are on public lands, a large number are on private land. These privately owned airstrips present to the private landowner a concern with respect to liability when the use of the airstrip is offered to others.

In 2005 I created the CAIN Ranch Airstrip on my own property when Lincoln Airport was temporarily closed for reconstruction. You will find the CAIN Ranch Airstrip on the next edition of the Great Falls Sectional designated as Restricted. During the past year and a half, the CAIN Ranch airstrip has seen considerable use by other pilots including a fly-in barbecue last August which included 17 aircraft from several states across the nation including as far away as Florida. While owners of private airstrips such as I enjoy sharing our facilities with others for recreational purposes, there is always the concern over liability. The amendment proposed by Senate Bill 318 will help relieve some of that concern and encourage private landowners to open their lands and airstrips to recreational aviation.

While all 50 states have some form of Recreational Use Statute which gives some protection to the private landowner when others are allowed access to and use of the land for recreational purposes without compensation, only Idaho now includes aviation as a specified recreational activity as the result of a unanimously approved amendment during the past year. Recreational aviation is a growing user group of both public and private aviation facilities and as such is a growing contributor to local economies. Including aviation in the Montana Recreational Use Statute will recognize that growing community and encourage the owners of private airstrips to either open those airstrips to general public use or at least allow their use by others for recreational purposes on a permission basis without compensation.

In 2003 I facilitated the creation of the Recreational Aviation Foundation, a 501(c) (3) public charity, whose purpose and goal is to preserve, maintain, and create recreational / backcountry airstrips across the nation. The inclusion of aviation in state recreational use statutes will further contribute to that goal by giving owners of private airstrips some protection from liability when they allow use by others. I would be very pleased to see my home state of Montana be the second state to specifically include aviation in its recreational use statute.

I am asking you to vote **for** the amendment proposed by Senate Bill 318.

Thank you.

COMMENTS RE: SENATE BILL 318

WILLIAM S. GALLEA, MD
PRESIDENT, VIGILANTE CHAPTER
MONTANA PILOT'S ASSOCIATION

I am in favor of amending the Montana Recreational Use Statute to include private airstrips and aviation activities on private land.

I believe this amendment is good for the State. The amendment is entirely within the spirit of the present statute, and only enhances its clarity.

The amendment is good for owners of private airstrips. By being specifically named in the law, it helps reassure them that they are protected against unreasonable claims of liability for the actions of their guests.

Finally the amendment is good for private pilots like myself, as it helps assure that private airstrips will remain open not only for recreational activities, but also for emergency and precautionary landings in the event of an unforeseen problem while in the air. It may well even encourage an increased availability of private airstrips in the state to non-commercial pilots.

I urge you to support this amendment.

Thank you,



William S. Gallea
2210 Lime Kiln Road
Helena, MT 59601
406-443-2179

5
3/22/07
318

PRIVATE USE AIRPORT CHARTING FORM

EXHIBIT 6
TE 3/22/07
318

The MDT Aeronautics Division is currently in the process of creating its new 2008 Aeronautical Chart. In order to accomplish this task, the Division relies heavily upon you to create the most accurate chart possible. The Division is asking all private airstrip owners to please fill out the information below concerning your airstrip. The data is crucial in helping us to list airports on the new chart.

A legal advantage for charting a private use airport on our chart is that an airstrip that is clearly listed on flight publications as being privately owned, not for public use without permission, having possible unreported hazards and landing at your own risk has less liability for the owner than an airstrip that is not charted but clearly identifiable from the air as an airstrip. An uncharted airport visible from the air could be construed as an invitation for public use.

If no word is received on an airstrip that is already charted, we will assume the information we last received is still correct. If the airstrip is no longer in operation, please let us know so we may delete it from the current chart.

Please mail to: **MDT Aeronautics Division**
Attn: Max Murphy, Aviation Support Officer
P. O. Box 200507
Helena, MT. 59620-0507

AIRSTRIP INFORMATION

Name of Airstrip (as to be depicted on chart) _____

Name of Owner _____

Owners Mailing Address _____

Owners Phone Number (for search and rescue purposes) _____

Is your airport open for public use? (check one) YES _____ NO _____

(Public Use means no prior permission is required and user DOES NOT assume own risk)

AIRSTRIP LOCATION

Latitude _____ Longitude _____ County _____

Nearest Town _____ Direction from Town _____ Distance _____

AIRSTRIP DATA

Runway Heading and Surface Type	Length	Width	Approach Obstructions
------------------------------------	--------	-------	--------------------------

_____	_____	_____	_____
-------	-------	-------	-------

_____	_____	_____	_____
-------	-------	-------	-------

Airport Elevation _____ Unicom Radio? Yes _____ No _____ Frequency _____

Fuel Available? Yes _____ No _____ Octane _____

Telephone Available? Yes _____ No _____ Phone number on field _____

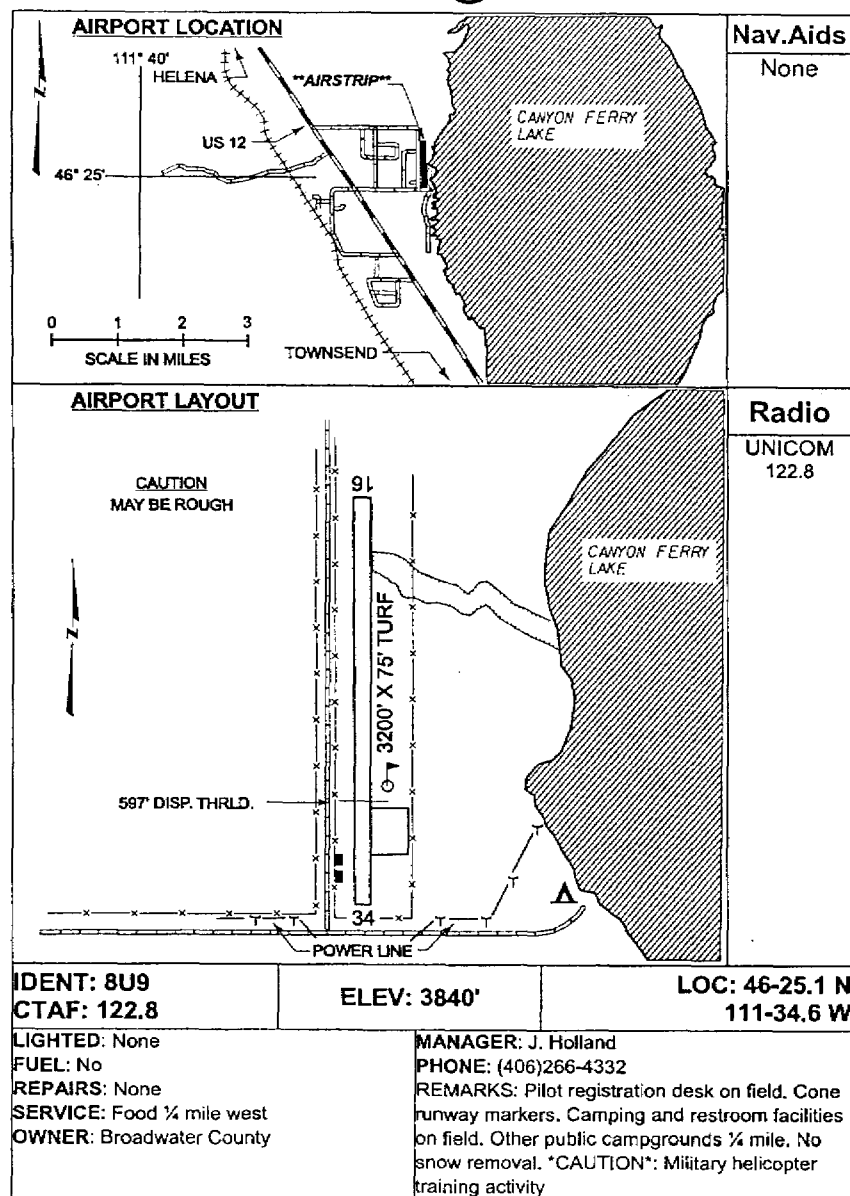
Comments or additional info. _____

Airstrip Owners Signature _____

CANYON FERRY 8U9



CANYON FERRY

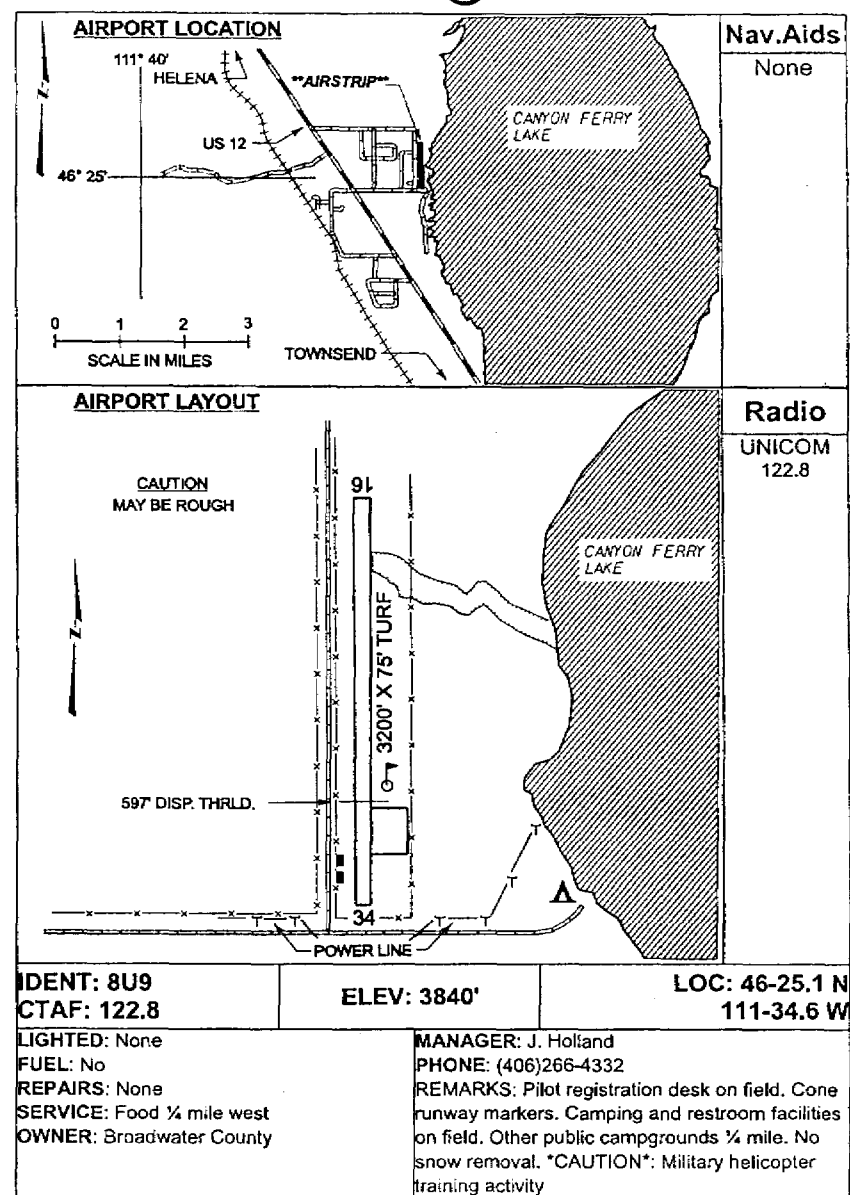


CANYON FERRY

CANYON FERRY 8U9



CANYON FERRY



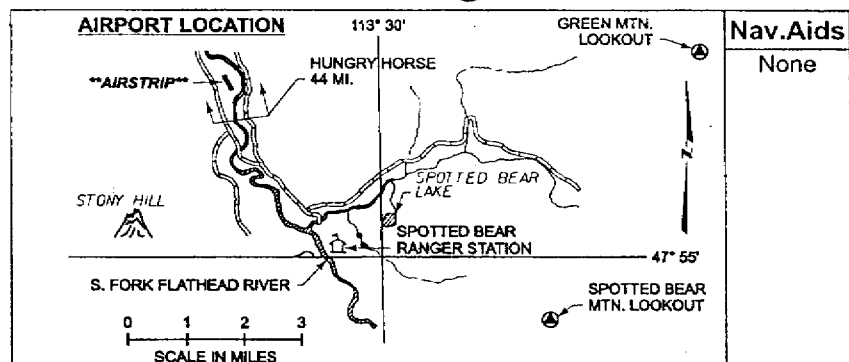
CANYON FERRY

SPOTTED BEAR

8U4

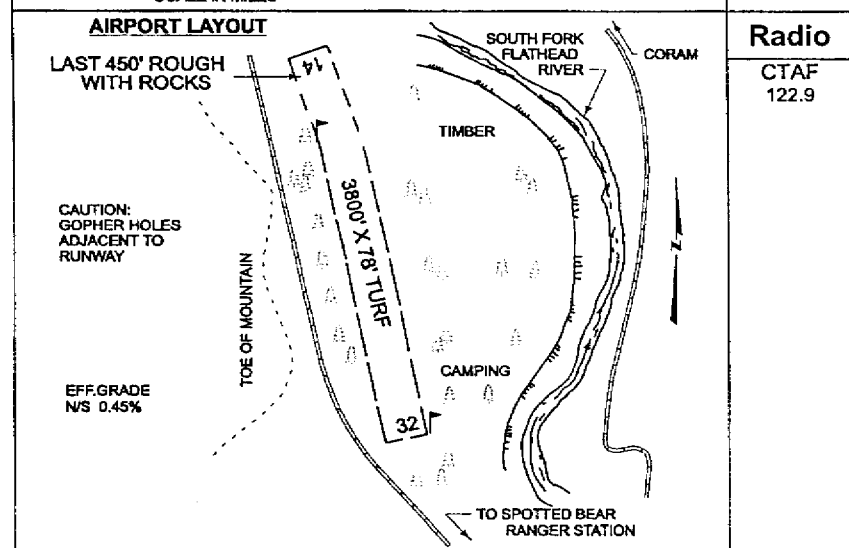


SPOTTED BEAR



Nav.Aids

None



Radio

CTAF
122.9IDENT: 8U4
CTAF: 122.9

ELEV: 3670'

LOC: 47-57.5 N
113-33.6 W

LIGHTED: None
FUEL: None
REPAIRS: None
SERVICE: None
OWNER: U.S. Forest Service

MANAGER: Deb Mucklow, District Ranger,
Spotted Bear Ranger Dist.
PHONE: (406)758-5376 Summer, (406)387-3800
Winter
REMARKS: Phone available at Spotted Bear
Station 3 miles from runway (USFS Private Line)
Apr.-Nov. Overruns each rwy end very rough.
Last 450' north end of rwy rough. Recommended
for experienced pilots only.

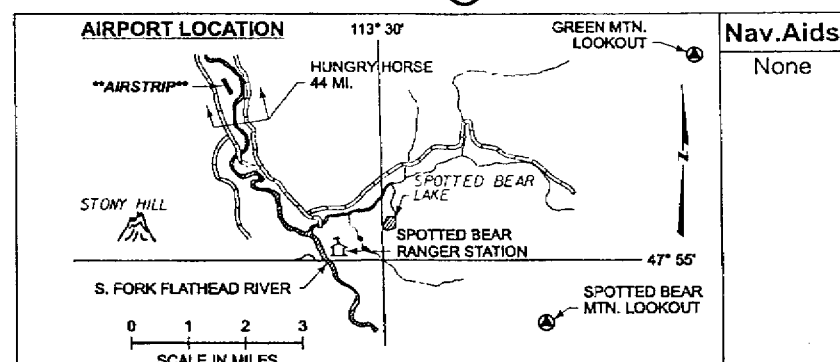
SPOTTED BEAR

SPOTTED BEAR

8U4

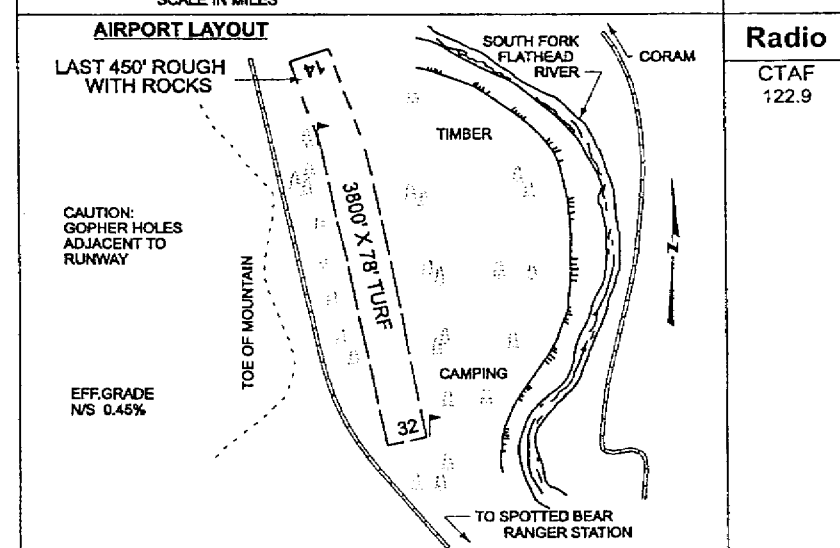


SPOTTED BEAR



Nav.Aids

None



Radio

CTAF
122.9IDENT: 8U4
CTAF: 122.9

ELEV: 3670'

LOC: 47-57.5 N
113-33.6 W

LIGHTED: None
FUEL: None
REPAIRS: None
SERVICE: None
OWNER: U.S. Forest Service

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Spotted Bear Ranger Dist.
PHONE: (406)758-5376 Summer, (406)387-3800
Winter
REMARKS: Phone available at Spotted Bear
Station 3 miles from runway (USFS Private Line)
Apr.-Nov. Overruns each rwy end very rough.
Last 450' north end of rwy rough. Recommended
for experienced pilots only.

SPOTTED BEAR

MEADOW CREEK 0S1



(U.S.F.S.) MEADOW CREEK

AIRPORT LOCATION 		Nav.Aids None
AIRPORT LAYOUT 		Radio CTAF 122.9
IDENT: 0S1 CTAF: 122.9	ELEV: 3984'	LOC: 47-50.8 N 113-24.6 W
LIGHTED: None FUEL: None REPAIRS: None SERVICE: None OWNER: U.S. Forest Service		MANAGER: Deb Mucklow, District Ranger, Spotted Bear Ranger Dist. PHONE: (406)758-5376 Summer, (406)387-3800 Winter REMARKS: *CAUTION*: Watch for horses on runway. Rodent holes adjoining Recommended takeoff & land rwy 35. Rwy 35 threshold marked with red cones. Recommended for experienced pilots only. No water available immediately adjacent to airport. Campsite adjacent to airport.

MEADOW CREEK

MEADOW CREEK 0S1

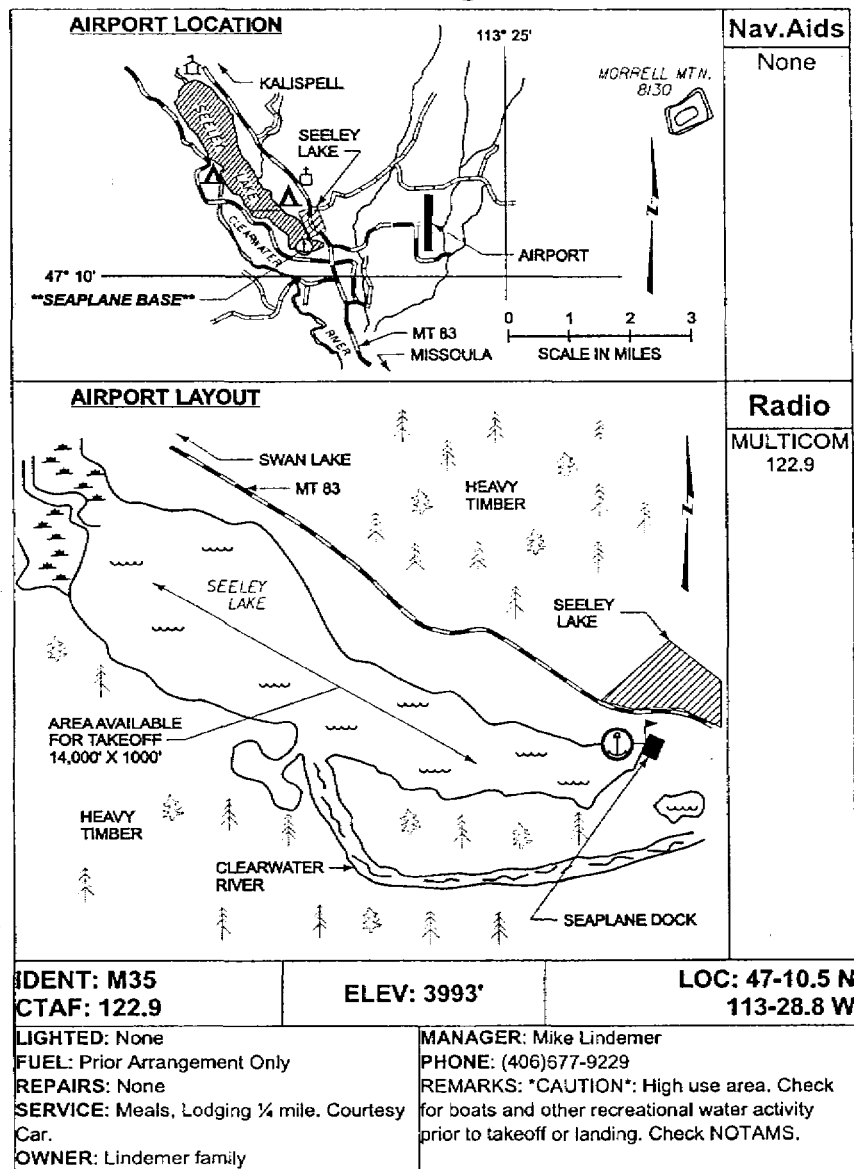


(U.S.F.S.) MEADOW CREEK

AIRPORT LOCATION 		Nav.Aids None
AIRPORT LAYOUT 		Radio CTAF 122.9
IDENT: 0S1 CTAF: 122.9	ELEV: 3984'	LOC: 47-50.8 N 113-24.6 W
LIGHTED: None FUEL: None REPAIRS: None SERVICE: None OWNER: U.S. Forest Service		MANAGER: Deb Mucklow, District Ranger, Spotted Bear Ranger Dist. PHONE: (406)758-5376 Summer, (406)387-3800 Winter REMARKS: *CAUTION*: Watch for horses on runway. Rodent holes adjoining Recommended takeoff & land rwy 35. Rwy 35 threshold marked with red cones. Recommended for experienced pilots only. No water available immediately adjacent to airport. Campsite adjacent to airport.

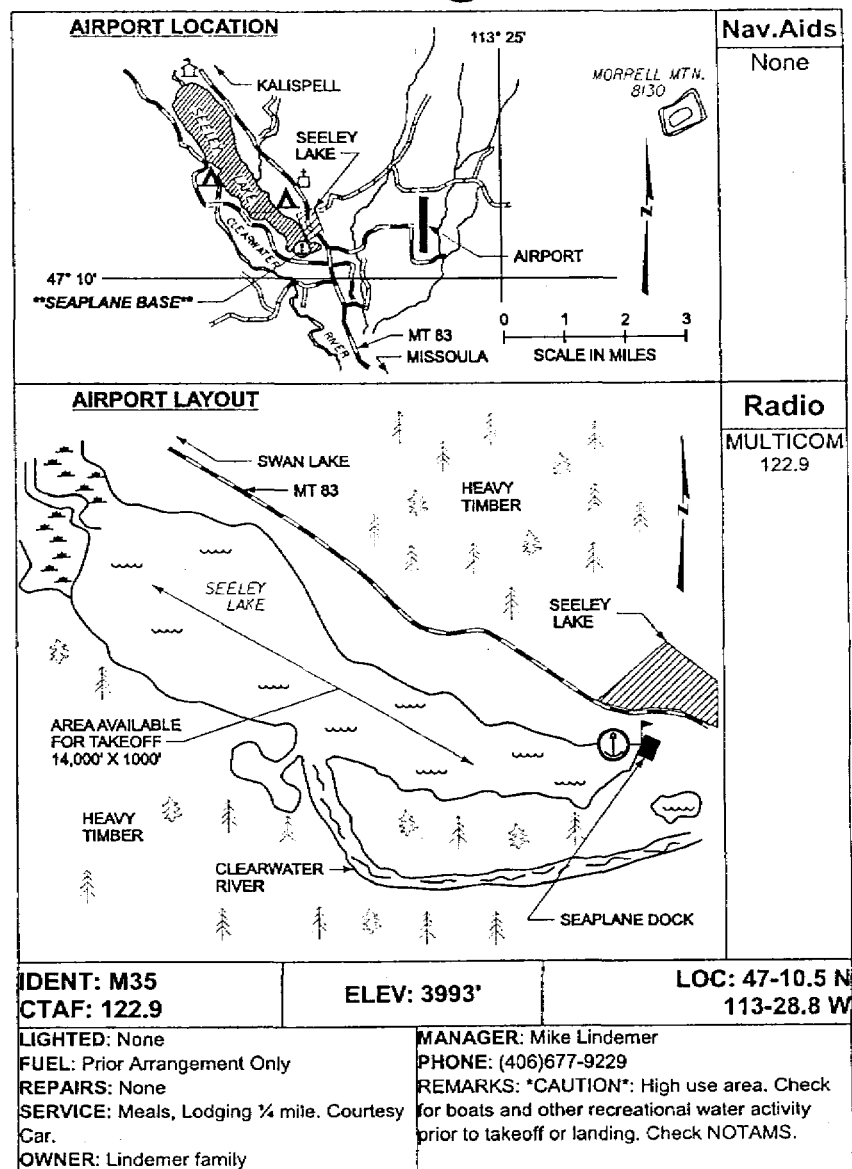
MEADOW CREEK

SEELEY LAKE (2) M35 (LINDEY'S LANDING WEST)



SEELEY LAKE (2)

SEELEY LAKE (2) M35 (LINDEY'S LANDING WEST)



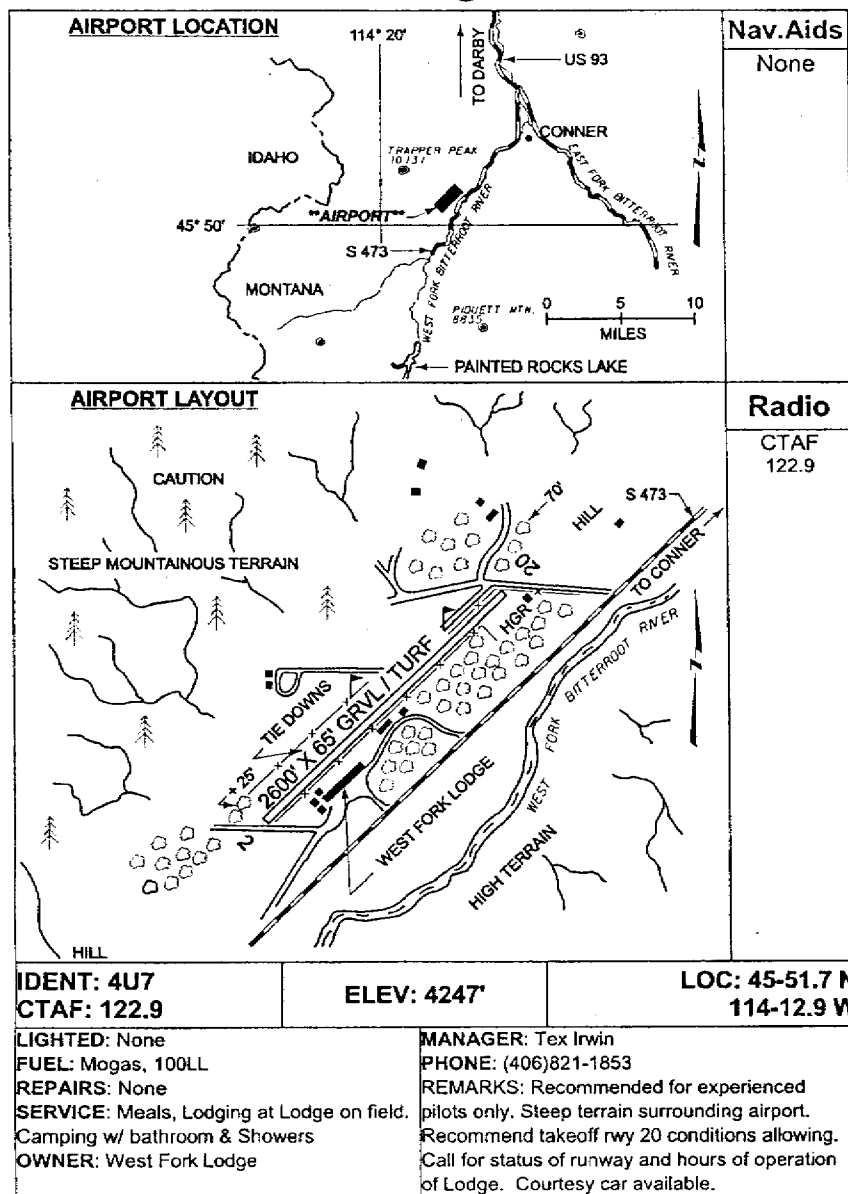
SEELEY LAKE (2)

CONNER

4U7



(WEST FORK)



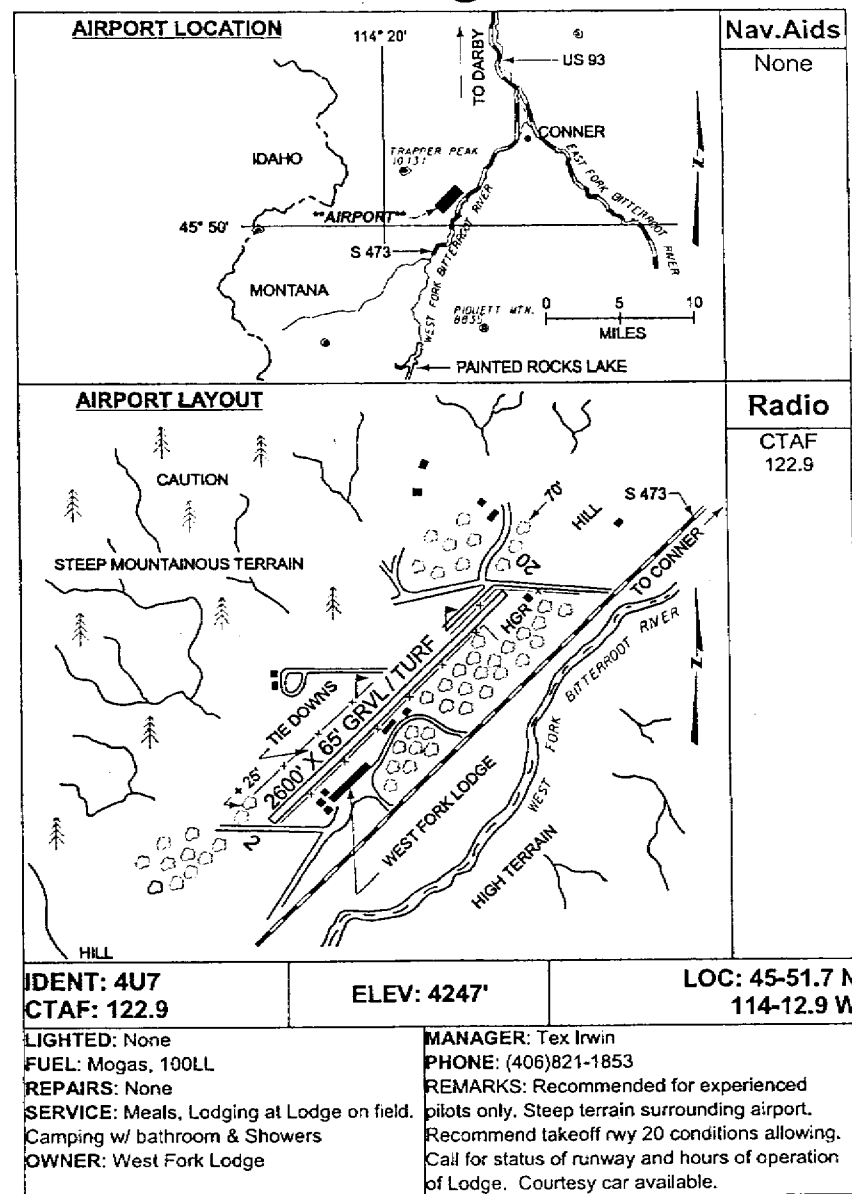
CONNER

CONNER

4U7



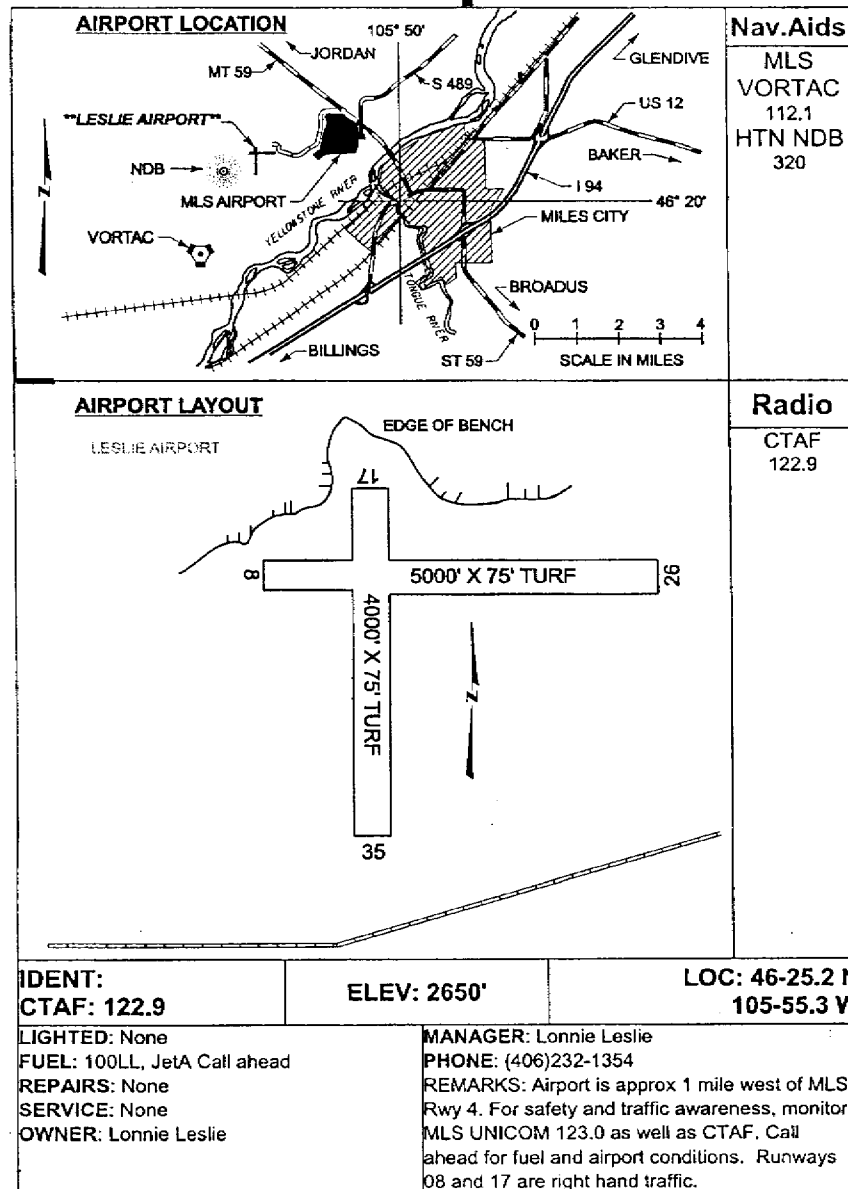
(WEST FORK)



CONNER

MILES CITY (2)

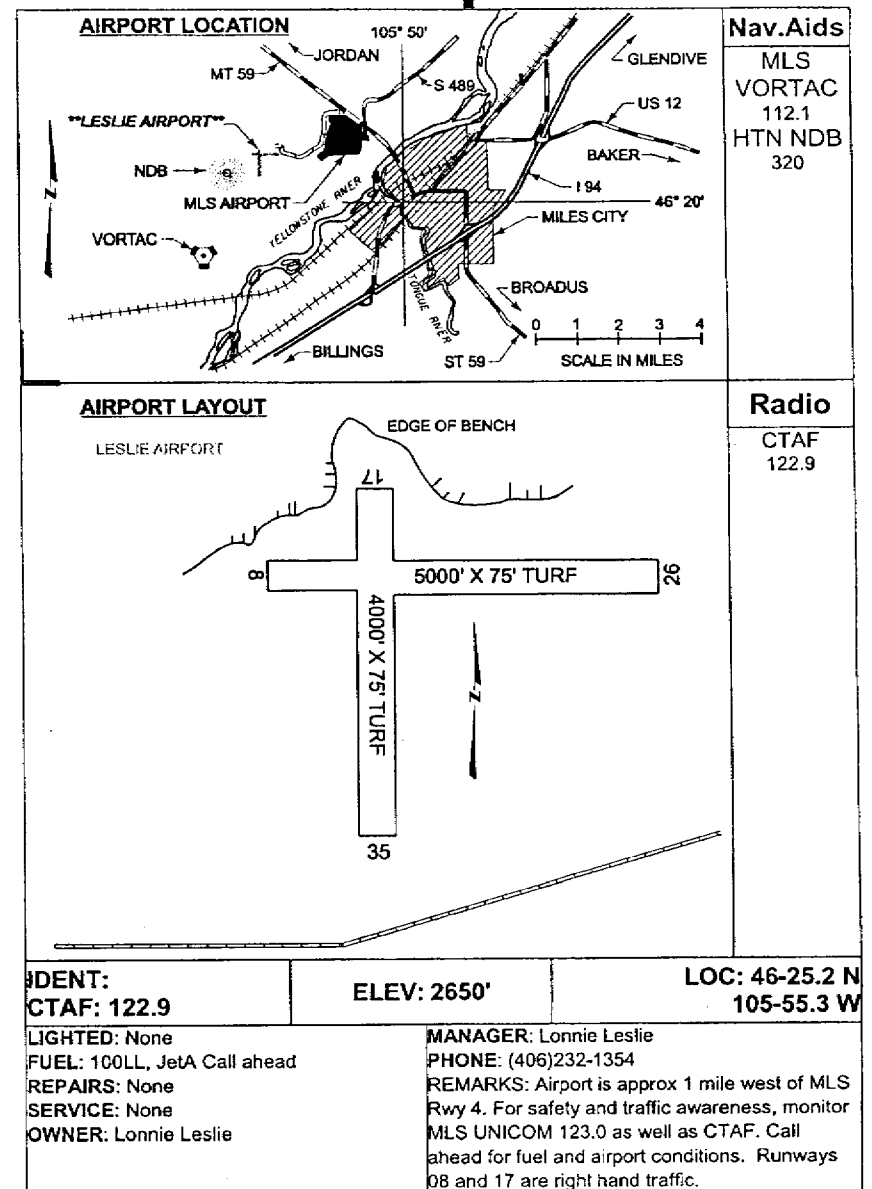
(LESLIE)



MILES CITY (2)

MILES CITY (2)

(LESLIE)



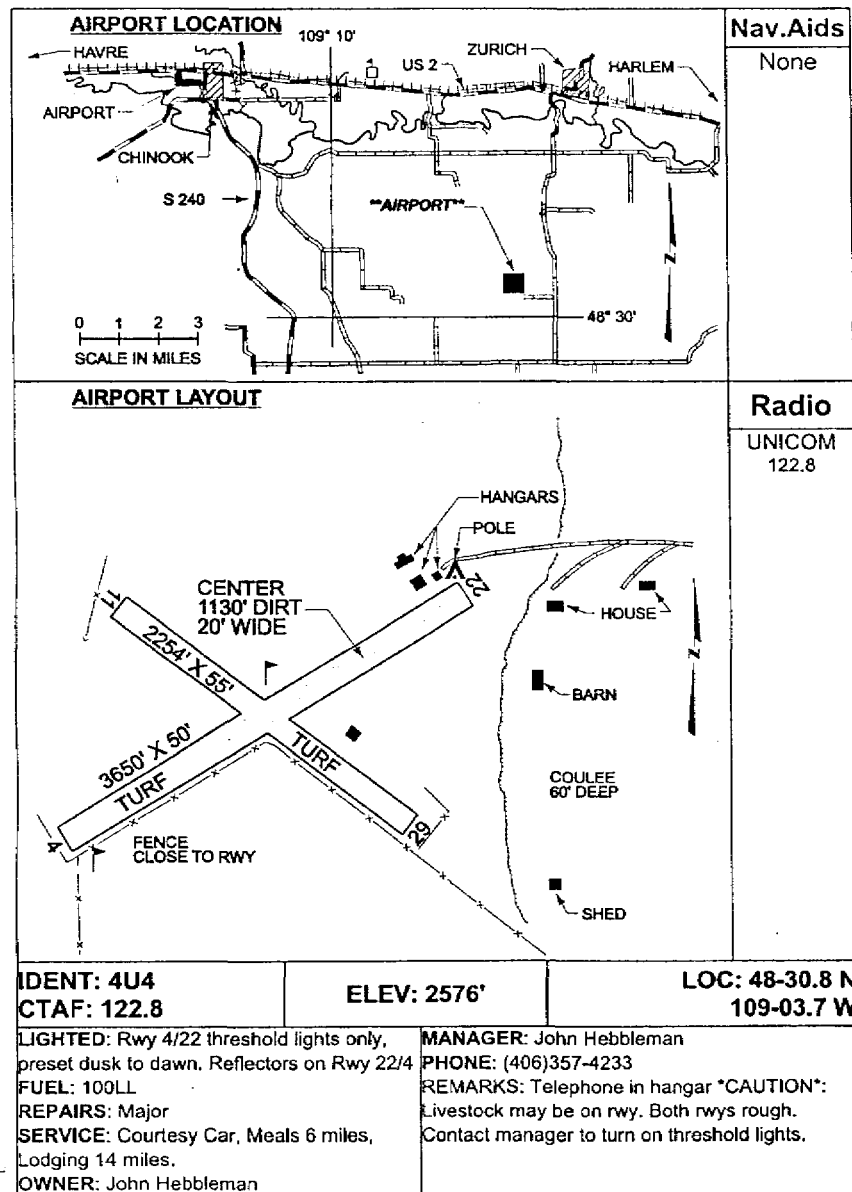
MILES CITY (2)

CHINOOK (2)

4U4



(HEBBELMAN)



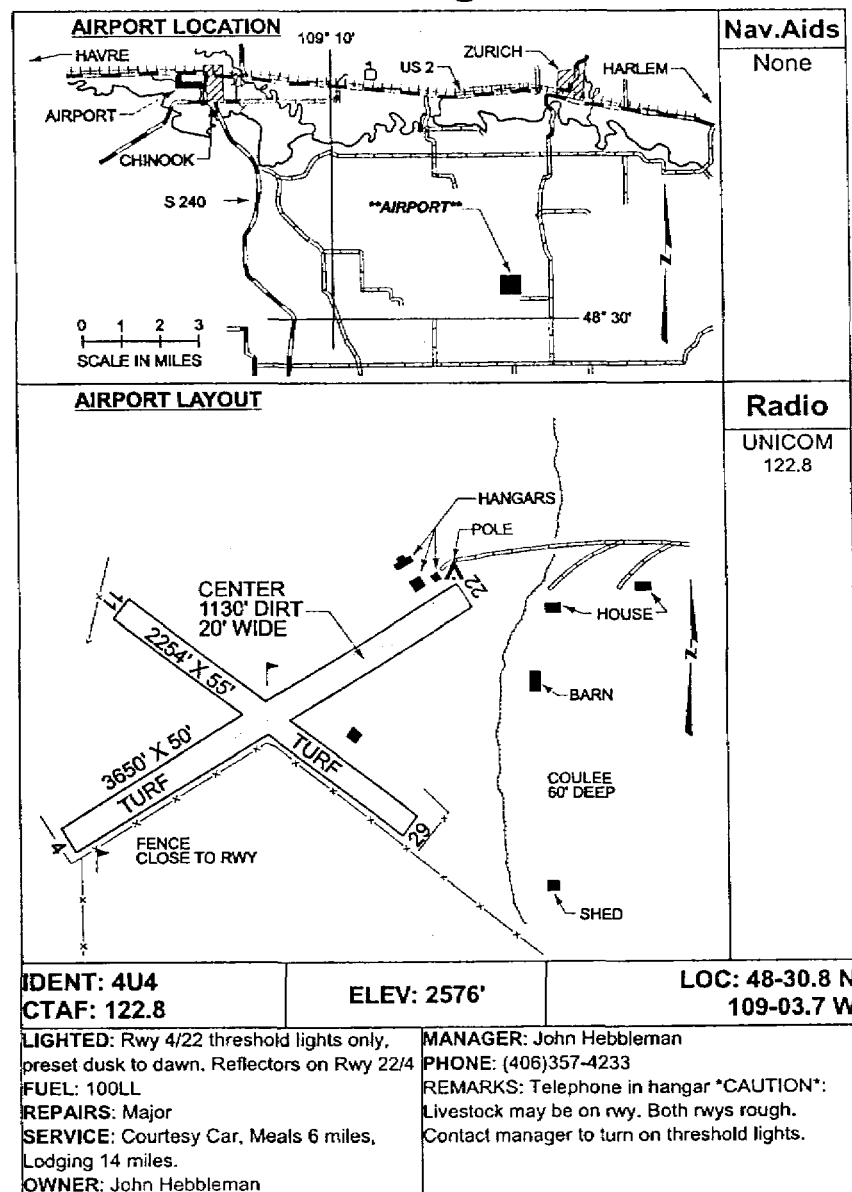
CHINOOK (2)

CHINOOK (2)

4U4



(HEBBELMAN)



CHINOOK (2)

Amendments SB 318

1. Page 2, line 1~~6~~⁷

FOLLOWING: Line 16

INSERT: (4) The owner of an airstrip is not entitled to the protections of section 70-16-302 (1) unless the owner of the airstrip has submitted a completed private use airport charting form with the Aeronautics Division of the Department of Transportation.

2. Page 3, line 15

INSERT: (4) The owner of an airstrip is not entitled to the protections of section 70-16-302 (1) unless the owner of the airstrip has submitted a completed private use airport charting form with the Aeronautics Division of the Department of Transportation.

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE: 3/22/07

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
REP. RON STOKER, VICE CHAIR	/	
REP. DAVE GALLIK, VICE CHAIR		/
REP. JULIE FRENCH	/	
REP. GEORGE EVERETT	/	
REP. HOLLY RASER	/	
REP. ROGER KOOPMAN	/	
REP. DOUGLAS CORDIER	/	
REP. KRAYTON KERNS	/	
REP. ROBYN DRISCOLL	/	
REP. KEN PETERSON	/	
REP. JESSE O'HARA	/	
REP. TOM MCGILLVRAY	/	
REP. DEBORAH KOTTEL	/	
REP. JOHN WARD	/	
REP. BOB EBINGER	/	
REP. RICK JORE	/	
CHAIRMAN DIANE RICE	28	/

**Montana House of Representatives
Visitors' Register**

Judiciary

COMMITTEE

Date 3/22/07

Bill Nos. 254, 278, 283 Sponsor(s) Wanzenvied, Gillan, Lind,
294, 318, 326 Hamington, Peterson, Schmidt
PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Bill No.	Support	Oppose	Info.
Melisse Case	MTA-MFT	SB254	X		
Mark Meredith	Board of Pharmacy / ST Pharm	SB 326	X		
BRAU HEEBEN	ST. PETER'S COMM PHARM	SB 326			
REBATO	DPHHS	SB 244	X		
Glen Prill	Self	SB 318	X		
Walter Melnick	Self	SB 318	X		
Jerome M. Cain	Self	SB 318	X		
GARY DUNCAN	SELF	SB 318	X		
Jim Lewis	Self - ^{MONT.} Flying Farmers	SB 318	X		
GARY BURNETT	SELF	SB 318	X		
John McKenna	BAELF / RAF	SB 318	X		
Bill Galica	MT PILOT'S ASSN	SB 318	X		
Debbie Aike	MONT Aeromats	SB 318	X		
John Hager	RTW	SB 254		X	
Marilyn Jewell	Montana Flying Farmers	SB 318	X		
Jim Kembel	MACOP	SB 326	X		
Mike Farguegon	AOPA	SB 318	X		
Bill Wooten	MHS	SB 254		X	
BRITA BLANK	BOARD OF PHARM	SB 326	X		

Andrea J. Oken MTLA SB 318 X
Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Leith Allen

IBEW 233

SB 254

X

**Montana House of Representatives
Visitors' Register**

Secretary COMMITTEE Date 3/22/07
 Bill Nos. 254, 278, 283, 294, 310, 326 Sponsor(s) Wynne, Hillen, Shid, Manning, Helgeson, Schmidt
 PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name	Representing	Bill No.	Support	Oppose	Info.
Steve Richards	Montana Health Solutions	254		X	
Tenille Hensley	Pharmacy	SB326	X		
Maria Korman	self	SB318			
Don Bennion	MT Chamber	SB254		X	
Janna Taylor	HD 11	SB318	X		
Don Judge	MT Nurses Association	SB254	X		
Bob Gilbert	MAA	SB318	X		
Tasumilk	AEC-CIC	SB254	X		
Paul Mercombie	MT Contractors Assn	SB254		X	
Margaret Morgan	Independent Electrical Co.	SB254		X	
Colley Day	ACCU	SB326			X
Nanette Gilbertson	American Cancer Society	SB326			✓
Agnes Lennmark	self	SB278			
Charlie Briggs	MAADS	SB294	X		
Robert Roberts	MT Family Foundation	SB278		X	
Edna Tackett	self	SB278		X	
Don Hargrove	MAFP	SB326	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Diane Rice, on March 23, 2007 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Dave Gallik, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Douglas Cordier (D)
Rep. Robyn Driscoll (D)
Rep. Bob Ebinger (D)
Rep. George Everett (R)
Rep. Julie French (D)
Rep. Rick Jore. (C)
Rep. Krayton Kerns (R)
Rep. Roger Koopman (R)
Rep. Deborah Kottel (D)
Rep. Tom McGillvray (R)
Rep. Jesse O'Hara (R)
Rep. Ken Peterson (R)
Rep. Holly Raser (D)
Rep. John Ward (R)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 342, 346, 347, 348, 350, 363,
3/15/2007
Executive Action: SB 164, SB 170, SB 318

EXECUTIVE ACTION ON SB 318

03:48:09 **Motion:** Rep. French moved that **SB 318 BE CONCURRED IN.**

Discussion:

03:49:27 Rep. French
03:49:30 Rep. Peterson
03:49:59 Rep. Kerns
03:50:25 Rep. Koopman
03:51:04 Rep. Raser
03:52:04 Rep. Ebinger
03:52:36 Rep. Kerns
03:53:05 Rep. Gallik
03:53:30 Rep. Kerns
03:54:46 Rep. Stoker
03:55:59 Rep. Raser
03:57:28 Rep. French
03:58:02 Rep. Gallik
03:59:43 Rep. Stoker
04:00:10 Rep. Kerns
04:00:23 Rep. McGillvray
04:00:31 Rep. Raser
04:00:42 Rep. Ebinger

04:01:21 Chairman Rice postponed Executive Action on SB 318.

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE: 3/23/07

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
REP. RON STOKER, VICE CHAIR	/	
REP. DAVE GALLIK, VICE CHAIR	/	
REP. JULIE FRENCH	/	
REP. GEORGE EVERETT	/	
REP. HOLLY RASER	/	
REP. ROGER KOOPMAN	/	
REP. DOUGLAS CORDIER	/	
REP. KRAYTON KERNS	/	
REP. ROBYN DRISCOLL	/	
REP. KEN PETERSON	/	
REP. JESSE O'HARA	/	
REP. TOM MCGILLVRAY	/	
REP. DEBORAH KOTTEL	/	
REP. JOHN WARD	/	
REP. BOB EBINGER	/	
REP. RICK JORE	/	
CHAIRMAN DIANE RICE	/	

Montana State Senate
Judiciary Committee
Helena, Montana

2/1/07

Subject: SB 0318

Senators:

My name is Peter Smith and I have been a resident of this great state since 1991 when we moved our family business (HCR Inc.) to Lewistown from Virginia. My career started in General Aviation back in 1975 and I have been flying and involved in aviation ever since. Just this past summer our eldest daughter Rebecca, received her pilots license and is currently pursuing a career as a flying Wild Life Biologist at the U of M, Missoula. I am the current President of and represent the Montana Pilots Association, Central Hangar.

Like many other individuals in aviation, I am a "grass roots" aviator and spend as much time as possible touring the state from the air. Dropping in on friends and businesses with private strips is the icing on the cake. Thirty one years ago when just a student pilot, I had an engine failure due to fuel contamination and made an emergency landing at a farm airstrip. This drove home the importance of privately owned airfields because when my engine failed I was approximately 25 miles from the nearest commercial airport.

I am fortunate enough to live on 80 acres 5 miles NE of Lewistown and have my own airstrip. One of my neighbors has a Bed and Breakfast and it would be a great selling point if they could advertise "Smithfield airstrip close by". After flying cross country several times for pleasure I know many aviators who like myself would go out of their way for such an adventure. Liability keeps my strip closed to all but a few friends.

When deciding on SB 318 please consider the safety aspects when more airstrips are opened to the public and the economical benefits to small towns like Lewistown.

Thank you for your consideration.

Peter R. Smith
4390 Lime Kiln Rd
Lewistown, MT 59457

406/538-7384



Montana Department of Transportation

Aeronautics Division
2630 Airport Road
PO Box 200507
Helena MT 59620-0507

EXHIBIT 2
Exhibit No. 2 Jim Lynch, Director
Date 2-7-07 Brian Schweigert, Governor
Bill No. SB 318

Testimony Senate Bill 318

Mr. Chairman and members of the Committee, for the record my name is Debbie Alke, Administrator, MDT Aeronautics Division.

MDT supports SB 318 as it adds protection to Montana landowners who choose to open their private airstrip to public use.

MDT produces a state aeronautical chart for use by pilots navigating in our great state. Passage of this legislation will assist MDT in encouraging private airstrip owners to show these airstrips on the chart. Depiction of these airstrips provides invaluable safety and emergency use information should a pilot encounter a problem, near an unknown, private airstrip.

MDT is also first response for air search and rescue in the state. We operate with a volunteer network of over 600 pilots dispersed throughout Montana. With an average of close to 100 incidents each year; having as much knowledge as possible on the location of private airstrips in this state and aircraft that are located at those airstrips assists these efforts immensely. This legislation could help supply beneficial information to this mission.

For these reasons and those stated before me, I ask for your support of SB318.

2-01-07

Montana Senate Judiciary Committee
Senate Bill 318

I am John McKenna of Bozeman, Montana. I am here today as a lifetime resident of Montana, a pilot for over 35 years. A pilot who utilizes aircraft in this state for both work and pleasure.

Today I am talking to you as the President of the Recreational Aviation Foundation (RAF). The RAF was founded in MT & remains Montana based.

Our mission is to preserve, enhance, and promote recreational flying opportunities here in our state as well across the country. Montana contains many special places that aviators share with friends and family. These places are enjoyed by many here in our own state, as well as others from around the country.

The RAF is not only working hard to preserve & take care of places, such as Schafer Meadows, Benchmark, and other existing public airstrips, but also to acquire private properties that will be open to the public.

This bill that is before you, to amend the existing Recreational Use Statutes legislation is important to the future of aviation and MT.

We would appreciate a Do Pass from this committee.

Thank you,

**Montana State Senate
Senate Judiciary Committee**

SB 0318

2/1/07

Submitter: Jerome M. Cain, PO Box 1057, Lincoln, MT 59639-1057

Good morning Senators,

I purchased the Smiling Gulch Ranch in Lincoln, Montana in 1990 in preparation for my retirement from Federal Service. The ranch included a hangar at Lincoln Airport which perfectly matched my lifetime desire to learn to fly, so I did just that, and have been flying since 1990. The primary purpose of my flying is recreational in the form of visiting recreational / backcountry airstrips throughout the western states for camping, hiking, fishing, photography, etc. With that in mind, I have become a member of state pilot organizations in six western states. While most recreational / backcountry airstrips are on public lands, a large number are on private land. These privately owned airstrips present to the landowner a concern with respect to liability when the use of the airstrip is offered to others.

In 2005 I created a private airstrip on my own ranch when Lincoln Airport was closed for reconstruction and I still wanted to be able to fly to and from Lincoln. During the past year and a half, my private airstrip has seen considerable use by other pilots including a fly-in barbecue last August which included 17 aircraft from several states across the nation and from as far away as Florida. While owners of private airstrips such as me enjoy sharing our facilities with others for recreational purposes, there is always the concern over liability. The amendment proposed by Senate Bill 318 will help relieve some of that concern.

While all 50 states have some form of Recreational Use Statute which gives some protection to the landowner when others are allowed access to and use of the land for recreational purposes without compensation, only Idaho includes aviation as a specified recreational activity, and its statute was only amended during the past year to make that inclusion. Recreational aviation is a growing user group of both public and private aviation facilities and as such is a growing contributor to local economies. Including aviation in the Montana Recreational Use Statute will recognize that growing community and encourage the owners of private airstrips to either open those airstrips to general public use or at least allow their use by others for recreational purposes on a permission basis without compensation.

While I am addressing the effect of this bill on private land owners, it should also be noted that these same protections will apply to state airports on public lands under similar situations.

In 2003 I facilitated the creation of the Recreational Aviation Foundation, a 501(c) (3) public charity, whose purpose and goal is to preserve, maintain, and create recreational / backcountry airstrips across the nation. The inclusion of aviation in state recreational use statutes will further contribute to that goal by giving owners of private airstrips some protection from liability when they allow use by others. I would be very pleased to see my home state of Montana be the second state to specifically include aviation in its recreational use statute.

I encourage you to favorably view the amendment proposed by Senate Bill 318.

Thank you.

Senate Judiciary Committee

Senate Bill 0318

February 1, 2007

Larry Ashcraft, 15435 East Lakeshore, Big Fork, MT 59911

I am a retired airline pilot, and I am now active in the Montana Pilot's Association and the Montana Seaplane Pilot's Association. I am an aircraft owner and flight instructor.

I am here today to speak in support of Senate Bill 0318. Other pilots will have presented the reasons why this bill should be enacted. However, I would like to make two important points:

- 1) The bill merely expands the limited liability coverage under the Montana recreational use statute to another form of recreation. The recreational use statute has stood the test of time in regard to other recreational uses pursued on private lands without compensation to the landowner.
- 2) There is still the provision for legal redress by a harmed party if gross negligence occurs on the part of the landowner. Grievously harmed people can still have their day in court.

Montana pilots and airstrip owners ask for your support.



"All you need is a name -
not some ambition."

PRAIRIE KRAFT SPECIALTIES

January 2, 2007

Senator Jesse Laslovich
Senate Judiciary Committee
Helena MT

Subject: Senate Bill 318

Dear Senator Laslovich and fellow members of the Judiciary Committee,

I am writing early this morning, February 1, 2007 asking you to support Senate Bill 318, which would amend Montana's Recreational Use Statute providing liability to landowners with private airstrips on their property.

Due to the weather this morning I am unable to come over in person. Hence, I have addressed my thoughts to your Chairman, the Honorable Senator Laslovich, asking him to include this in your hearing this morning as well as provide it to all members of the Judiciary Committee. I learned to fly in Cut Bank and my instructor, Arnie Lindberg, owned a private airstrip out on his farm, where he also operated his aerial application and aircraft maintenance business. Saying this another way, I learned to fly off a private recreational airstrip. Many of the neighbors around the country (Herb and Chet Salmons come immediately to mind) also had airstrips on their farms/ranches. All of these of course are basically recreational airstrips.

Although I learned to fly a long time ago (1963), I remember back then concern over "liability" for someone other than the owner utilizing the airstrip. Most of the people I knew accepted the risk but all were apprehensive and everyone had "heard horror stories." Specifically naming private and recreational airstrips to be included under the umbrella of Montana's existing "Recreational Use Statute" is a wonderful idea. I currently reside in Great Falls and still fly, primarily for business but also personal use. I have been President of the Great Falls Montana Pilots Association Chapter, officially known as the "Great Falls Hangar", as well as an officer of the statewide Montana Pilots Association (MPA). I can assure you I know of no one who flies or is active in aviation that does not think this is a good idea.

I am thanking you in advance for your support of this good piece of legislation, Senate Bill 318. Should you wish to discuss this, please feel free to contact me at 406-727-3192.

Sincerely yours,

Loren Smith

clv

Chuck Jarecki, 28517 Rocky Point Road, Polson, MT 59860

I am a past president of the Western Montana Stockman's Association and currently the Western Director of the 700 member Montana Pilots' Association. I am here today as a member of these two organizations to voice my support for SB 318.

I have been an active Montana pilot and aircraft owner for 46 years. I owned a ranch west of Polson for 26 years, on which I constructed an airstrip and airplane hangar. The airstrip was mainly for my own use. Other pilots were welcome to use it, but I always had a concern if an aviator should be injured or killed during aircraft operations. The current ranch owner, although not a pilot, keeps the airstrip maintained. He would like to have people fly in, but until the current statute is amended by this bill, he feels forced to keep the airstrip closed to the public. Other ranchers and farmers are in the same situation.

Montana landowners are currently protected under Montana's recreational use statute for a large variety of recreational activities, but not aviation. In Montana there are airstrip property owners who would like to permit the private, non-commercial use of their airstrips for recreational purposes. There are others who are considering closing their airfields to public use because of concerns of personal liability. Public land managers have the same concern. **Maintained private airstrips are one of a pilot's best choices for an emergency or precautionary landing and they can facilitate the emergency evacuation of injured parties. Providing an incentive to a landowner to keep and maintain an airstrip is in the best interest for public safety.**

Recreational flying is a growth tourist industry in Montana, with pilots and their passengers coming from all over the country to participate in the Montana recreational experience. As this activity grows, more landing areas will be required to facilitate the dispersal of use over the landscape. Many airstrip owners would be amenable to opening their landing strips to the public, just as they allow other recreational uses like hunting and fishing, if it were not for the concern of being the subject of unfounded lawsuits.

It is difficult to measure the effectiveness of Montana's recreational use statute. In courts, the statute is only used as an affirmative defense when a lawsuit has already been filed. Attached is a summary of Montana cases where the recreational use statute was employed to protect the landowner. In all cases, the landowner prevailed. These are the only cases of record, so the statute must be acting as a deterrent to lawsuits.

In 2006, the State of Idaho amended its recreational use statute to include aviation as one of the enumerated recreational uses. This was the first state to do so. The legislation passed easily.

I urge you to give SB 318 a "do pass as introduced" recommendation.

Montana Case Law Interpreting Montana's Recreational Use Statute
University of Montana Law School analysis, November, 2006

Montana's recreational use statute is designed to encourage landowners to open their lands to the public by limiting landowner liability to recreational users. In the courts, the statute is only used as an affirmative defense when a lawsuit has already been filed. As a policy, the statute's true value can only be measured by the number of lawsuits it has prevented. Unfortunately, it is impossible to tell how many lawsuits a statute has prevented. However, as a general principle, Montana attorneys give great weight to statutory language. Furthermore, this statute has generated few cases, suggesting that it is quite a successful deterrent. Below is a summary of Montana cases.

Jobe v. City of Polson, 322 Mont. 157, 94 P.3d 743 (Mont.2004). In this case a fisherman fell through a rotten board on a dock owned by the city and was injured. The Supreme Court upheld the district courts determination that Montana's Recreational Use statute barred Jobe's negligence claim. The Court remanded the case to district court for a determination of whether or not the city's conduct rose to the level of willful and wanton misconduct. The Court noted, "A landowner's relief from liability can only be divested through "willful and wanton misconduct."" *Jobe* at ¶ 25. Willful and wanton misconduct is difficult to prove. In *Jobe* the court provided several definitions:

"As correctly observed by the District Court, the term "willfully" is defined by statute. Section 1-1-204(5), *MCA*, states: "Willfully," when applied to the intent with which an act is done or omitted, denotes a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law, to injure another, or to acquire any advantage." *Jobe* ¶ 17.

"“Wanton,” on the other hand, does not have a statutory definition, but in previous cases we have held it to be synonymous with “reckless.” In *Wollaston v. Burlington Northern, Inc.*, we defined willful, wanton, or reckless conduct as an act for which “it is apparent, or reasonably should have been apparent, to the defendant that the result was likely to prove disastrous to the plaintiff, and [the defendant] acted with such indifference toward, or utter disregard of, such a consequence that it can be said he was willing to perpetuate it.” *Wollaston*, 188 Mont. 192, 198, 612 P.2d 1277, 1280 (Mont. 1980)." *Jobe*, ¶ 18.

Saari v. Winter Sports, Inc., 314 Mont. 212, 64 P.3d 1038 (Mont. 2003). In this case a child, Jean Saari, went sledding with a church youth group at Big Mountain Ski Resort. They did not pay for lift tickets nor purchase or rent equipment from Winter Sports, Inc. who owns Big Mountain. Jean's inner tube went out of control and landed in a creek. The injuries Jean suffered caused her death. The Saaris sued Winter Sports, Inc. The Montana Supreme Court upheld the district court which found Winter Sports, Inc. was shielded from liability because of Montana's Recreational Use Statute. *Saari* largely overruled another Montana case, *Simchuk v. Angel Island Community Ass'n*, 253 Mont. 221, 833 P.2d 158 (Mont. 1992).

Dobrocke v. City of Columbia Falls, 300 Mont. 348, 8 P.3d 71 (Mont. 2000). In this case a woman was tripped by barb wire while walking on city property. The city argued the limited liability based on the recreational use statute. The Montana Supreme Court did not agree. "We cannot conclude that the general public would regard as reasonable that simply walking to and from ones home is one of the purposes contemplated by the recreational use statute. Rather than a recreational purpose, walking to and from ones home is an everyday, ordinary, and expected use of city property by one of its citizens. Accordingly, we hold that the District Court erred in granting the City's motion for summary judgment under the recreational use statute." *Dobrocke*, ¶¶ 78-79. I believe this defendant failed for two reasons. One, it is a city, whose property is available to the public anyway. Two, the facts indicated the plaintiff was merely walking her dogs. Had the plaintiff been engaged in a different type of activity, the result may well have been different.

Mauri Morin, 32010 N. Finley Point Road, Polson, MT 59860-7832

I am currently the president of the Mission Valley Hangar (aka chapter) of the Montana Pilots' Association which has about 700 members.

I am also currently the president of Lake County Chapter #1122 of the Experimental Aircraft Association (EAA). The EAA is a national organization with a membership of about 200,000 and our local chapter numbers 43.

I am here today representing these two organizations in support of SB 318, an act amending Montana's recreational use statute to provide limited liability to landowners who provide airstrips for public use without valuable consideration.

I have been an active pilot and aircraft owner for 55 years and currently own a Cessna 180 and am building an owner built aircraft (aka homebuilt). I have been involved in aviation, in one way or another, through out this country as well as the U.K. and Hong Kong.

The litigious nature of our society has had disastrous affects on the aircraft industry, in general, and general aviation, in particular. Cessna aircraft was forced out of the single airplane business for over a decade because of product liability insurance costs. The perception is that an aircraft owner is "RICH" and, if you own a ranch with a landing strip as well as an airplane; well, you've got to be "DOUBLY RICH", but nothing is further from truth. It is a sport for us just like skiing, motorcycling or boating are for others.

Montana landowners are currently protected under Montana's recreational use statute for a large variety of recreational activities, but not aviation. In Montana there are airstrip property owners who would like to permit the private, non-commercial use of their airstrips for recreational purposes but have concerns about liability. As well, there are others who are considering closing their airfields to public use because of concerns of personal liability. Public land managers have the same concern. **Maintained private airstrips are one of a pilot's best choices for an emergency or precautionary landing. Providing an incentive to a landowner to keep and maintain an airstrip is in the best interests of public safety.**

Recreational flying is a growth tourist industry in Montana, with pilots and their passengers coming from all over the country to participate in the Montana recreational experience. As this activity grows, more landing areas will be required to facilitate the dispersal of use over the landscape. Many airstrip owners would be amenable to opening their landing strips to the public, just as they allow other recreational uses like hunting and fishing, if it were not for the concern of being the subject of unfounded lawsuits.

I urge you to give SB 318 a "do pass" recommendation.